

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/09/2004

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.21690 of 2004

and

WPMP No.26218 of 2004

and

WVMP No.1736 of 2004

S.Nithyanandam

Additional Superintendent of

Police, P.E.W.,

Perambalur District

Perambalur .. Petitioner

-vs-

The Secretary to Govt.,

Home (SC) Dept.,

Secretariat

Chennai 9. .. Respondent

This writ petition is filed under Article 226 of the Constitution of India praying to issue a writ of mandamus as stated therein.

For Petitioner : Mr.R.Singaravelan

For Respondent : Mr.D.Krishnakumar

Special Government Pleader

:ORDER

The petitioner, who has been serving as Additional Superintendent of Police in the Home Department, State of Tamil Nadu, has filed this writ petition seeking a writ of mandamus directing the respondent to promote him to the post of Superintendent of Police with effect from the date of promotion given to his immediate junior with all monetary and service benefits. Pending the same, he filed a WPMP seeking adinterim injunction restraining the respondent from withholding his promotion to the post of Superintendent of Police in pursuance of the Charge Memo issued to him in letter No.SC/3199-11/02 dated 26.11.2002. An interim order was granted by this Court on 28.7.2004 directing the respondent not to finalise the panel, which is stated to be due in the first week of August, 2004, until further orders. In order to vacate the same, the State has come forward with an application in WVMP No.1736 of 2004.

2. With the consent of both sides, the writ petition itself is taken up for consideration, and the following order is passed, since the Court is of the considered opinion that the materials available are suffice to give a final disposal to the matter.
3. Heard the learned Counsel for the petitioner and the learned Special Government Pleader for the respondent also. Affidavit in support of the writ petition is also perused.
4. Admittedly, the petitioner has been serving as Additional Superintendent of Police. While he was expecting his promotion, a charge memo was served on him on 26.11.2002. He tendered his explanation on 23.6.2003, and pending the same, charges were framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. Under such circumstances, the petitioner filed an application in O.A.No.3547 of 2003 before the Tamil Nadu Administrative Tribunal, challenging the same stating that the facts would attract only Rule 17(a) and not Rule 17(b), and hence, there cannot be any impediment for promoting him. An enquiry was conducted by the Tribunal in the said O.A., and it was found that it was only a case of Rule 17(a) and not Rule 17(b). Aggrieved, the State filed a writ petition before this Court in W.P.No.19144 of 2004, and interim stay for a period of two weeks was granted therein, and that writ petition is pending.
5. While the matter stood thus, the petitioner has brought forth the instant writ petition for the said relief. Pending the same, an application has been filed seeking interim relief. The prayer in the writ petition is to the effect that he should be given promotion. But, at the same time, the same relief has been indirectly asked in the WPMP. The first and foremost thing is that such an interim relief cannot be granted, while the main relief is also in the same line. In such circumstances, this Court is of the considered opinion that the writ petition itself could be disposed of.
6. What are all contended by the learned Counsel for the petitioner before this Court is that the charge memo what is found in the typed set of papers, would clearly indicate that it would attract Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and not Rule 17(b), and even assuming that a charge was framed under Rule 17(b), pending the same, he can be promoted.
7. In answer to the above, the learned Special Government Pleader would submit that it is true that a charge has been framed against the petitioner under Rule 17(b); that it was the subject matter before the Tamil Nadu Administrative Tribunal, and it has been found that it is a matter of Rule 17(a); that under the circumstances, the State has moved this Court by way of a writ petition, wherein interim stay for a limited period was given; that the said writ petition by the State is pending, wherein the subject matter as to whether the facts and circumstances would attract Rule 17(a) or 17(b) has to be adjudicated upon.
8. Now, at this juncture, it remains to be stated that the matter has got to be adjudicated by this Court in W.P.No.19144 of 2004. In such circumstances, the contention put forth by the learned Counsel for the petitioner cannot even be canvassed or considered by this Court, and hence, it does not call for adjudication before this Court.
9. The other contention of the learned Counsel for the petitioner is that even assuming that charges are framed under Rule 17(b), the petitioner could be given promotion. It remains to be stated that it is well within the

ambit of the discretionary power vested upon the competent authority and not this Court. Needless to say that when an authority is vested with the discretionary powers, it is not for the Court to direct the authority to exercise the discretionary powers in one way or other. But, at the same time, if the discretion has not been exercised judiciously, then, the person affected by the same can approach this Court invoking the writ jurisdiction. Under the circumstances, this Court is of the considered opinion that no relief could be granted in this writ petition.

10. Therefore, this writ petition is dismissed. No costs.

Consequently, connected WPMP and WVMP are also dismissed.

Index: yes

Internet: yes

To:

The Secretary to Govt.,
Home (SC) Dept.,
Secretariat
Chennai 9.

nsv/

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